

## **Part Twelve - Planning and Zoning Code**

### **Title Two - Planning**

#### **Chapter 1222**

#### **Chesapeake Bay Preservation Ordinance**

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#### **1222.01 TITLE**

This Chapter shall hereafter be known, cited, and referred to as the “Chesapeake Bay Preservation Ordinance” of Loudoun County.

#### **1222.02 EFFECTIVE DATE**

This Ordinance shall be effective upon adoption by the Loudoun County Board of Supervisors.

### 1222.03 PURPOSE

The purpose and intent of this Chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other State waters by minimizing the effects of human activity upon these waters in order to provide for the health, safety, and general welfare of the citizens of Loudoun County.

### 1222.04 AUTHORITY

This ordinance is enacted pursuant to the authority of the Chesapeake Bay Preservation Act, Sections 10.1-2100 et seq., of the Code of Virginia.

### 1222.05 DEFINITIONS (as used in this Chapter)

- (a) “Accessory Structure” means a building or structure subordinate and incidental to, and located on the same lot with, a principal building, the use of which is customarily found in association with and is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building.
- (b) “Administrator” means the Director of Building and Development or his/her designee.
- (c) “Agricultural land” means any tract of land used for crop production, pasture, animal husbandry, aquaculture, horticulture, except for silviculture, or used to support dairy, poultry, and feedlot operations.
- (d) “Applicant” means a person seeking any determination or approval required by this ordinance.
- (e) “Best Management Practice” or “BMP” means a practice or combination of practices that are the most effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals.
- (f) “Buffer Area” means the 100-foot Buffer Area included in the Resource Protection Area.
- (g) “Chesapeake Bay Preservation Area” or “CBPA” means any land designated by the County pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations and Section 10.1-2107 of the Code of Virginia. The Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

- (h) “Development” means the construction or substantial alteration of facilities or structures related to agricultural, residential, commercial, industrial, institutional, recreation, transportation, or utility uses.
- (i) “Impervious cover” means a surface composed of any material that prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.
- (j) “Land disturbing activity” means any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land.
- (k) “Noxious weeds” means Johnson grass, kudzu, poison ivy, ragweed, poison oak, poison sumac, purple loosestrife, multiflora rose, mile-a-minute, Ailanthus and any other species hereinafter designated by the Virginia Department of Conservation and Recreation as a noxious weed or invasive alien plant.
- (l) “Ordinary High Water Mark” or “OHWM” means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- (m) “Passive recreation” means recreational uses (such as hiking, nature observation, and picnicking) that make use of areas which are largely left in their natural state.
- (n) “Plan of development” means development plans, including but not limited to, concept development plans (ZMAP/ZCPA/ZRTD/ZMOD), rezoning plats, special exception plats (SPEX/SPMI), variance, preliminary plats of subdivision, preliminary/record subdivision plats, family subdivision plats, subdivision waiver plats, AR-1 and AR-2 division plats (SBBD), subdivision exception plats, final development plans, site plans (STPL/REST/STMP), site plan revisions (STPR), site plan amendments (SPAM), construction plans and profiles, record plats, dedication plats (DEDI), overlot grading plans, and erosion and sediment control plans.

- (o) "Public road" means a publicly owned and/or maintained road designed and constructed in accordance with Facilities Standards Manual standards or Virginia Department of Transportation standards.
- (p) "Private road" means a privately owned and maintained road designed and constructed in accordance with the Facilities Standards Manual.
- (q) "Redevelopment" means the process of developing land that is or has been previously developed.
- (r) "Resource Management Area" or "RMA" means all **unincorporated** areas of the County not designated as a Resource Protection Area.
- (s) "Resource Protection Area" or "RPA" means (i) wetlands connected by surface flow to, and contiguous to, water bodies with perennial flow and (ii) a 100-foot Buffer Area located adjacent to and landward of wetlands described in (i) above and along both sides of any water body with perennial flow, as measured horizontally from the OHWM.
- (t) "Septic Tank" means a settling tank in which the heavy solids are settled and the organic solids decompose by anaerobic bacterial action.
- (u) "Silvicultural activity" means any forest management activity, including but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia and is located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.
- (v) "Substantial alteration" means expansion or modification of a structure or development that would result in (i) land disturbing activity within a Resource Protection Area, or (ii) land **disturbing activity** exceeding an area of 2,500 square feet within a Resource Management Area.
- (w) "Water body with perennial flow" means a body of water that flows in a natural or manmade channel year-round during a year of normal precipitation. The term "water body with perennial flow" includes, but is not limited to perennial streams and may include drainage ditches or channels constructed in wetlands or former natural drainageways, which convey perennial flow. Lakes and ponds, with perennial streams flowing into, out of, or through them, are a part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow.

- (x) “Water-dependent facility” means the development of land or a facility that cannot exist outside of a Resource Protection Area and must be located within a Resource Protection Area, either in whole or in part, by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, (i) the intake and outfall structures of power plants, water treatment plants, and sewage treatment plants; (ii) marinas and other boat docking structures; (iii) beaches and other public water-oriented recreation areas; (iv) fisheries or other marine resources facilities; (v) outfall structures of storm drains and sewers; and (vi) stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers.
- (y) “Wetlands” means those lands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 40 CFR 230.3(t), as amended.

#### 1222.06 ADMINISTRATION

The Director of the Department of Building and Development or his/her designee, herein referred to as the “Administrator,” shall be responsible for administration of this Chapter.

#### 1222.07 AREAS OF APPLICABILITY

This Chapter and all regulations adopted hereunder shall apply to all land located within the unincorporated areas of Loudoun County, which is hereby designated as a Chesapeake Bay Preservation Area (CBPA). The CBPA consists of the followingas follows:

- (a) The County is divided into a Resource Protection Area (“RPA”), as defined in Section 1222.05, and a Resource Management Area (“RMA”), as defined in Section 1222.05, that are subject to the criteria and requirements of this Chapter. The RMA, which includes all areas outside of the RPA, are regulated to protect the RPA.
- (b) For the purpose of calculating the permitted floor area and number of residential units in the applicable zoning district, the land area in any portion of the RPA and RMA shall be included as part of the land area for such calculations.

## 1222.08 RPA DELINEATION REQUIREMENTS

The general extent of the RPA and RMA shall be as shown on the Loudoun County Chesapeake Bay Preservation Area Map. The extent of the RPA depicted on the adopted map is subject to change pursuant to the RPA delineation required by this Section. The purpose of an RPA delineation is to determine whether streams or water bodies on or within the parcel have perennial flow, to identify the presence of wetlands connected by surface flow to, and contiguous to, a water body with perennial flow, and to delineate the Buffer Area boundary consistent with the requirements of this Chapter.

- (a) An RPA delineation shall be provided in conjunction with the submission of each plan of development application and Water Quality Impact Assessment proposing land disturbing activity in excess of 2,500 square feet. However, no such delineation shall be required where one has been previously approved. The Administrator shall waive the RPA delineation for any grading permit for an individual single family detached dwelling and its associated accessory structures and uses or for any structure intended for an agricultural use if documentation is provided that there are no streams or water bodies with the potential to be characterized as RPA, as defined in Section 1222.05, located within the limits of land disturbing activity, nor within 200 feet of the limits of land disturbing activity, as measured from the OHWM.
- (b) The RPA delineation shall include (i) a perennial flow determination; (ii) a wetland delineation depicting wetlands connected by surface flow to, and contiguous to, water bodies with perennial flow; and (iii) a Buffer Area boundary delineation prepared in accordance with the Facilities Standards Manual.
- (c) The Administrator shall approve, modify, or disapprove the RPA delineation consistent with the requirements of this Chapter within sixty (60) days of submission of all items required by subparagraph (b) and payment of the application fee.
- (d) An approved RPA delineation shall be depicted on all plans of development prior to approval of such plan of development.

## 1222.09 LOCATIONAL CLEARANCE REQUIREMENTS

- (a) An application for a locational clearance shall be submitted to, and approved by, the Administrator prior to approval of a zoning permit for any proposed land disturbing activity of 2,500 square feet or less or construction of a private road or driveway disturbing 2,500 square feet or less located on any parcel of land which includes RPA within its boundaries. The application shall include a map, plan, or plat depicting the extent of the RPA as identified on the adopted Loudoun County Chesapeake Bay Preservation Area Map; the

proposed limits of clearing and grading; and all proposed structures, roads, driveways, drainfields, wells, conveyance lines, storm sewers, erosion and sediment controls, stormwater management facilities, and other uses.

- (b) If applicable, an RPA delineation shall be required in accordance with Section 1222.08.
- (c) An application for a grading permit consistent with the requirements of Chapter 1220, Erosion Control, of the Codified Ordinances of Loudoun County, shall be submitted and approved prior to the approval of a zoning permit for any proposed land disturbing activity exceeding 2,500 square feet. Any such proposed land disturbing activity exceeding 2,500 square feet shall comply with Section 1222.17(a)iii.

#### 1222.10 NONCONFORMING STRUCTURES AND USES WITHIN THE RPA

- (a) Any structure within the RPA that was legally existing on **(adoption date)** shall be deemed a nonconforming structure and may continue and be maintained, but may not be enlarged or expanded except as permitted by an Administrative Waiver, approved pursuant to Section 1222.20, or an Exception approved pursuant to Section 1222.23. **Any structure existing on (adoption date) and for which a building permit was not required at the time of construction may continue and be maintained, but may not be enlarged or expanded.** Nothing in this Chapter shall affect the reconstruction or replacement of nonconforming structures, **legally existing on (adoption date),** destroyed or damaged by any casualty, if such reconstruction or replacement is otherwise permitted by law and so long as the structure is reconstructed or replaced substantially in the same location and creates no more impervious cover than existed with the prior structure.
- (b) Any non-agricultural use within the RPA that was legally existing on **(adoption date), or any existing non-agricultural use for which a building permit was not required at the time of construction,** shall be deemed a nonconforming use and may continue and be maintained, but may not be enlarged or expanded except as permitted by an Exception approved pursuant to Section 1222.23. Agricultural uses, excluding structures, are governed pursuant to Section 1222.15.
- (c) Changing one nonconforming use to another nonconforming use shall only be permitted pursuant to the provisions for redevelopment contained in Section 1222.12.

## 1222.11 EXEMPT USES

The following uses shall be exempt from the provisions of this Chapter to the extent that they are permitted by the Zoning Ordinance and are not prohibited by any other ordinance or law:

- (a) Water wells; passive recreation without constructed facilities, pedestrian trails and appurtenant structures; and historic preservation and archaeological activities located within the RPA, provided that:

i. Any land ~~disturbing~~ ~~activity~~ exceeding 2,500 square feet is conducted in accordance with the erosion and sediment control requirements of Section 1222.17(a)iii;

ii. No more land shall be disturbed than is necessary to provide for the exempt use; and

~~iii.~~ A written request for exemption is filed with and approved by the Administrator. Such request shall be filed along with any associated plans of development submitted for review.

~~iii.~~ iv. An RPA delineation in accordance with the requirements of Section 1222.08 is approved.

- (b) Any land disturbing activity of 2,500 square feet or less in size within the RMA, provided that a Locational Clearance is ~~approved~~ ~~obtained~~ pursuant to Section 1222.09.

- (c) Silvicultural activities, provided that such operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in "Virginia's Forestry Best Management Practices for Water Quality, Fourth Edition, July 2002," as amended, and as determined by the Virginia Department of Forestry.

- (d) The construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads, and their appurtenant structures, in accordance with:

i. Regulations promulgated pursuant to the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (Section 10.1-603.1 et seq. of the Code of Virginia); ~~and~~ ~~and~~

ii. An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation or Loudoun County ~~;~~ ~~and~~.



~~iii.~~ The exemption of public roads is further conditioned on approval of an RPA delineation in accordance with the requirements of Section 1222.08 and the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and minimize adverse effects on water quality.

(e) The construction, installation, operation, and maintenance of water lines, sanitary sewer lines including pump stations, natural gas lines, underground telecommunications and cable television lines and appurtenant structures owned, permitted, or both, by Loudoun County, the Loudoun County Sanitation Authority (Loudoun Water), an incorporated Town, or a regional service authority and subject to the following, provided that as determined by the Administrator:

- i. To the degree possible, the location of such utilities and facilities shall be outside RPAs;
- ii. No more land shall be disturbed than is necessary to provide for the proposed utility installation and maintenance;
- iii. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable State and Federal permits and designed and conducted in a manner that protects water quality; and

iv. Any land disturbing activity exceeding an area of 2,500 square feet shall comply with the erosion and sediment control requirements of Section 1222.17(a)iii.

~~iv.~~v. An RPA delineation in accordance with the requirements of Section 1222.08 is approved.

## 1222.12 PERMITTED USES IN THE RESOURCE PROTECTION AREA

The following uses are permitted within the RPA following submission and approval of a Water Quality Impact Assessment in accordance with the requirements of Section 1222.18 and, if applicable, an RPA delineation pursuant to 1222.08:

(a) A new or expanded water-dependent facility, provided that the following criteria are met:

- i. It does not conflict with the Zoning Ordinance;
- ii. It complies with the Performance Criteria outlined in Section 1222.17;

- iii. Any nonwater-dependent component is located outside of the RPA; and
- iv. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

(b) Redevelopment, provided that ~~the following criteria are met~~: there is no increase in the amount of impervious cover, it is in the same physical location, there is no further encroachment into the RPA, and it conforms with the Erosion and Sediment Control and Stormwater Management Requirements outlined in Section 1222.17.

(c) Private roads and driveways may be constructed in or across the RPAs, provided that ~~the following criteria are met~~:

- i. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway in or across the RPA;
- ii. The alignment and design of the private road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and
- iii. The design and construction of the private road or driveway satisfy all applicable Performance Criteria (Section 1222.17) and County Codes.

(d) Flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided ~~that the following criteria are met~~:

- i. The Administrator determines that the proposed location of the facility is the optimum location to minimize encroachment in the RPA and to minimize adverse effects on water quality;
- ii. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
- iii. All applicable permits for construction in Federal or State waters must be obtained from the appropriate Federal and State agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission prior to approval of a grading permit application.

- iv. The facility is shown on a plan of development approved by the Administrator prior to construction; and
- v. Routine maintenance is performed on such facilities to assure that they continue to function as designed.
- vi. A Best Management Practice that collects and treats runoff from only an individual lot or some portion of the lot shall not be located within a Resource Protection Area.

#### 1222.13 PERMITTED USES IN THE RESOURCE MANAGEMENT AREA

Uses, development, and redevelopment, otherwise permitted by the Zoning Ordinance and other law, shall be allowed in the RMAs provided that the use, development, or redevelopment complies with the Performance Criteria outlined in Section 1222.17.

#### 1222.14 BUFFER AREA REQUIREMENTS

- (a) Within the Buffer Area, vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution shall be retained if present and shall be established where it does not exist as required by this Chapter and the Facilities Standards Manual.
- (b) Notwithstanding the permitted uses, waivers, and exceptions authorized by this Chapter, the Buffer Area shall not be reduced in width.
- (c) The Buffer Area shall be deemed to achieve a seventy-five percent (75%) reduction of sediments and a forty percent (40%) reduction of nutrients.
- (d) Existing vegetation may be removed from the Buffer Area, subject to the approval of the Administrator, to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater for shoreline erosion control projects, as follows:
  - i. Trees may be pruned or removed if necessary to provide for sight lines and vistas. Trees may not be removed where the sight lines or vistas can be created by pruning trees alone. If trees are removed, they shall be replaced with other vegetation that, in the judgment of the Administrator, is at least equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Pruning within, or tree removal from, the Buffer Area for all sight lines and vistas shall be limited to an aggregate land area no greater than 5,000 square feet or twenty-five percent (25%) of the Buffer Area, whichever is less.

A written request shall be submitted to the Administrator for the proposed removal of trees from the Buffer Area. Such request shall include a plan prepared by an ISA Certified Arborist, Professional Forester with a Bachelor of Science degree from an accredited School of Forestry, Landscape Architect, or other registered design professionals experienced in riparian plantings depicting the following: (1) the vantage points for the sight lines and vistas; (2) the portion of the streambank or shoreline to be viewed; (3) the area in which trees are to be pruned or removed; (4) the location of all trees six (6) inches or greater in diameter at breast height (4.5 feet) or as required by the Administrator; (5) the location of the trees to be removed or pruned; and (6) the location and type of replacement vegetation proposed. Trees shall not be pruned or removed from the Buffer Area to create sight lines and vistas until a written determination is obtained from the Administrator that the proposed activity is in compliance with the requirements of this Chapter.

- ii. Existing vegetation may be removed to the minimum extent necessary to locate an access path which only serves an individual lot. Such access paths shall be constructed and surfaced to effectively control erosion and shall not exceed six (6) feet in width except as necessary for handicapped access.

A written request shall be submitted to the Administrator for the proposed access path. Where construction of the access path requires clearing of woody vegetation, such request shall include a plan prepared by an ISA Certified Arborist, Professional Forester with a Bachelor of Science degree from an accredited School of Forestry, Landscape Architect, or other registered design professionals experienced in riparian plantings depicting the following: (1) the proposed location of the access path; (2) the area in which trees are to be removed; (3) the location of all trees six (6) inches or greater in diameter at breast height (4.5 feet) or as required by the Administrator; (4) the location of the trees to be removed, and (5) the location and type of any proposed replacement vegetation. The access path shall not be constructed until a written determination is obtained from the Administrator that the proposed activity is in compliance with the requirements of this Chapter.

- iii. Dead, diseased, dying, or storm-damaged trees or shrubbery and noxious weeds may be removed, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. Thinning of trees may be allowed, pursuant to sound silvicultural practices in

accordance with a Forest Management Plan approved by the Administrator.

- iv. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

A written request shall be submitted to the Administrator for the proposed shoreline erosion control project. Such request shall include a plan depicting the following: (1) the proposed location of, and the materials and techniques to be used for, the shoreline erosion control project; (2) the area in which trees are to be removed; (3) the location of all trees six (6) inches or greater in diameter at breast height (4.5 feet) or as required by the Administrator; (4) the location of the trees to be removed; and (5) the location and type of replacement vegetation proposed. The shoreline erosion control project shall not be constructed until a written determination is obtained from the Administrator that the proposed activity is in compliance with the requirements of this Chapter.

- (e) When and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses, the full width of the Buffer Area shall be planted in accordance with the following requirements:

- i. A planting plan prepared by an ISA Certified Arborist, Professional Forester with a Bachelor of Science degree from an accredited School of Forestry, Landscape Architect, or other registered design professionals experienced in riparian plantings in accordance with the requirements of the Facilities Standards Manual shall be submitted to the Administrator for review and approval prior to the approval of any preliminary/record subdivision plats, subdivision waiver plats, AR-1 and AR-2 division plats, site plans, construction plans and profiles, record plats, and/or erosion and sediment control plans, except erosion and sediment control plans submitted in conjunction with an individual single family detached dwelling and its associated accessory structures.
- ii. The planting plan shall be included in the site improvement performance bond, except where there is no site improvement bond, in which case, the planting plan shall be included in the erosion or sediment control bond, or shall be bonded separately upon County approval, and shall be implemented within one year following construction plan or site plan

approval or prior to issuance of the first occupancy permit, whichever occurs first in time.

- iii. A targeted stocking of 75 percent survival with uniform distribution shall be achieved within one year of planting as determined by the Administrator. In the event that the targeted stocking is not achieved, the Applicant shall provide supplemental planting to achieve the targeted stocking prior to bond release.

#### 1222.15 AGRICULTURAL PERFORMANCE STANDARDS WITHIN THE BUFFER AREA

- (a) On agricultural lands, the 100-foot Buffer Area shall be managed to prevent concentrated flows of surface water from breaching the Buffer Area and appropriate measures may be taken to prevent noxious weeds from invading the Buffer Area. Agricultural activities, except structures, may be located within the Buffer Area as follows:
  - i. Within the landward 50 feet of the Buffer Area, when at least one agricultural BMP is being implemented on the adjacent land. The BMP shall address the more predominant water quality issue – erosion control or nutrient management – on the adjacent land as determined by the Loudoun County Soil and Water Conservation District Board. In conjunction with the remaining Buffer Area, the BMP shall be presumed to achieve water quality protection at least the equivalent of the 100-foot Buffer Area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Training and Certification Regulations (4 VAC 5-15-10 et seq.) administered by the Virginia Department of Conservation and Recreation.
  - ii. Within the landward 75 feet of the Buffer Area when agricultural BMPs, which address erosion control, nutrient management, and pest control, approved by the Loudoun County Soil and Water Conservation District Board, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resources Conservation Service. A nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining Buffer Area, this collection of BMPs shall be presumed to

achieve water quality protection at least the equivalent of the 100-foot Buffer Area.

iii. Within the full 100-foot Buffer Area adjacent to agricultural drainage ditches when at least one agricultural BMP is being implemented on the adjacent land. The BMP shall address the more predominant water quality issue – erosion control or nutrient management – on the adjacent land as determined by the Loudoun County Soil and Water Conservation District Board.

(b) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow, or violate the agricultural performance standards of this Chapter, the Administrator, in cooperation with the Loudoun County Soil and Water Conservation District, shall provide a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(c) In cases where the landowner or his agent or operator has refused assistance from the Loudoun Soil and Water Conservation District with (i) a problem specifically identified pursuant to (b) above or (ii) in complying with or documenting compliance with the agricultural performance standards of this Chapter, the District shall report the noncompliance to the Administrator. The Administrator shall require the landowner to correct the problems within a specified period of time not to exceed eighteen (18) months from the time the initial notification of the deficiencies is provided to the landowner. The Administrator, in cooperation with the District, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

#### 1222.16 MINIMUM LOT SIZE IN RELATION TO THE RPA

The following requirements shall apply to lots created for residential use after ~~the (adoption date) of the Chesapeake Bay Preservation Ordinance~~, provided, however, that the following requirements shall not be applicable to the extent that the application of such requirements to a proposed subdivision would decrease the allowed dwelling unit density of the parcel proposed to be subdivided.

(a) Lots served by public water and sewer, including communal systems:

- i. All lots of 20,000 square feet or less shall be located entirely outside of the RPA.
  - ii. All lots greater than 20,000 square feet shall contain a minimum of 20,000 square feet outside the RPA.
- (b) Lots not served by public water and sewer:
- i. All lots of 40,000 square feet or less shall be located entirely outside of the RPA.
  - ii. All lots greater than 40,000 square feet shall contain a minimum of 40,000 square feet outside of the RPA.
- (c) The minimum distance between the RPA and the principal structure shall be equal to the minimum corresponding required yard (front, side and rear) of the applicable zoning district.

#### 1222.17 PERFORMANCE CRITERIA AND PLAN AND PLAT NOTES

- (a) Any use, development, or redevelopment of land within a Chesapeake Bay Preservation Area (CBPA), shall meet the following performance criteria:
- i. All stormwater best management practices shall be maintained as required in Chapter 1096 of the Codified Ordinances of Loudoun County.
  - ii. All development and redevelopment within a CBPA exceeding 2,500 square feet of **land disturbing activity** shall be subject to a plan of development.
  - iii. Any land disturbing activity that exceeds an area of 2,500 square feet, including, without limitation, construction of single-family dwellings, septic tanks, and drainfields, shall comply with the requirements of Chapter 1220, Erosion Control, of the Codified Ordinances of Loudoun County. The following shall also be required, as applicable:
    - a. If land disturbing activity is proposed within the RPA or within 100 feet of the RPA, as confirmed by an RPA delineation performed in accordance with Section 1222.08, an engineered plan shall be required. The engineered plan shall be drawn to a minimum scale of one inch equals fifty feet (1"=50'), be sealed by a professional engineer, and depict the RPA as identified by an RPA delineation performed in accordance with Section 1222.08, the proposed limits of clearing and grading, and all proposed structures, roads, driveways, drainfields,



wells, conveyance lines, storm sewers, erosion and sediment controls, stormwater management facilities, and other uses.

iv. Except as provided in v. below, For all individual sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit, the owner shall cause a maintenance pump-out of the septic tank of each such system to be performed by a septic tank cleaner licensed by the Loudoun County Health Department at least once every 5 years and shall provide documentation of the subject maintenance at the request of the County. Licensed septic tank cleaners shall report all pump-outs in a manner acceptable to the Loudoun County Health Department on a biweekly basis and shall provide the homeowner with a copy of the information reported.

v. For all individual alternative onsite sewage systems regulated by the Virginia Department of Health Regulations for Alternative Onsite Sewage Systems, the owner shall cause maintenance of such systems to be performed in accordance with the aforementioned state regulations.

~~vi.~~ For new construction, a reserve subsurface disposal field (drainfield) associated with an individual sewage disposal system disposal site with a capacity at least equal to that of the primary on-site subsurface disposal field (drainfield) shall be provided~~in accordance with Chapter 1066 of the Codified Ordinances of Loudoun County.~~

~~vi.~~vii. All development and redevelopment within a CBPA shall satisfy the stormwater management requirements of Chapter 1096 of the Codified Ordinances of Loudoun County.

~~vii.~~viii. Copies of all State and Federal wetland permits shall be submitted with Grading Permit applications consistent with Section 7.500 of the Facilities Standards Manual.

(b) In addition, any plan of development shall meet the following performance criteria:

i. No more land shall be disturbed than is necessary to provide for the construction and maintenance of the proposed use, development, or redevelopment.

a. The limits of land disturbing activity~~anee~~, development, or redevelopment shall be strictly defined by the approved erosion and sediment control plan or Water Quality Impact Assessment as required by Section 1222.18. These limits of land disturb~~ing~~~~anee~~ activity shall

be clearly depicted on the erosion and sediment control plan or Water Quality Impact Assessment and physically marked on the development site prior to any clearing or grading on the site.

ii. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the construction and maintenance of the proposed use, development, or redevelopment.

iii. Land development shall minimize impervious cover consistent with the construction and maintenance of the proposed use, development, or redevelopment to the maximum extent practicable.

(c) The following note shall be provided on each plan of development that includes property within thean RPA:

i. "Any land disturbing activity or removal of vegetation within the Resource Protection Area (RPA) shall comply with the requirements of Chapter 1222 of the Codified Ordinances of Loudoun County.

(d) The following notes shall be provided on each plan of development for properties served by individual sewage disposal systems:

i. "A reserve subsurface disposal field (drainfield) with a capacity at least equal to that of the primary subsurface disposal field (drainfield) shall be maintained for all individual sewage disposal systems."

ii. Either of the following notes, as applicable:

a. "All individual sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be pumped out at least once every 5 years in accordance with the requirements of Chapter 1222 and Chapter 1066 of the Codified Ordinances of Loudoun County"; or

b. "All individual alternative onsite sewage systems regulated by the Virginia Department of Health Regulations for Alternative Onsite Sewage Systems shall be maintained in accordance with the aforementioned state regulations."

## 1222.18 WATER QUALITY IMPACT ASSESSMENT REQUIREMENTS

A Water Quality Impact Assessment (WQIA), prepared in accordance with the requirements of the Facilities Standards Manual, shall be required for any proposed land disturbing activity, development, or redevelopment within an RPA, excluding

agriculture (except structures) and uses that are exempt pursuant to Section 1222.11. A WQIA shall be submitted for the permitted uses outlined in Section 1222.12 concurrent with construction plans and profiles, site plans, and erosion and sediment control plans. A WQIA shall also be submitted in conjunction with all waiver and exception requests as outlined in this Chapter. The purpose of the WQIA is to identify the impacts of proposed development on water quality and land within the RPA and to identify specific mitigation measures for those impacts. There shall be two types of WQIAs: A Minor WQIA shall be required for any proposed land disturbance activity, development, or redevelopment of 2,500 square feet or less of cumulative land disturbance activity within the RPA as depicted on any construction plans and profiles, site plans, and erosion and sediment control plans that does not encroach into the seaward 50 feet of the Buffer Area; a Major WQIA shall be required for any proposed land disturbance activity, development, or redevelopment that exceeds 2,500 square feet of cumulative land disturbance activity within the RPA as depicted on any construction plans and profiles, site plans, and erosion and sediment control plans or encroaches into the seaward 50 feet of the Buffer Area:

- (a) The Administrator shall review the WQIA to determine if the proposed use, development, or redevelopment is consistent with the purpose and intent of this Chapter. The Administrator may request review by, and may include any comments received from, the Chesapeake Bay Local Assistance Division (CBLAD) of the Virginia Department of Conservation and Recreation. The Administrator shall make a finding based upon the following criteria:
  - i. The necessity of locating the proposed use, development, or redevelopment within the RPA and the ability to place improvements elsewhere on the site to avoid disturbance of the RPA;
  - ii. No more land is disturbed than is necessary to provide for the proposed use, development, or redevelopment;
  - iii. Indigenous vegetation is preserved to the maximum extent practicable consistent with the proposed use, development, or redevelopment;
  - iv. Impervious cover is minimized consistent with the proposed use, development, or redevelopment;
  - v. The disturbance of jurisdictional waters and wetlands is minimized;
  - vi. The proposed use, development, or redevelopment minimizes disruption of the hydrology of the site;
  - vii. The proposed use, development, or redevelopment minimizes degradation to aquatic vegetation and/or life;

- viii. Proposed erosion and sediment controls are adequate to reduce sedimentation;
  - ix. Proposed BMPs achieve the pollutant removal requirements of the Facilities Standards Manual;
  - x. Proposed mitigation measures will result in minimal disturbance to all components of the RPA; and
  - xi. The proposed mitigation measures, which may include revegetating an area equal to the area of any disturbance proposed within the RPA, will be effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff to preserve the function of the Buffer Area.
- (b) The Administrator shall require additional mitigation measures where he/she finds that potential impacts have not been adequately addressed.

#### 1222.19 ADMINISTRATIVE WAIVER FOR LOSS OF A BUILDABLE AREA

- (a) When the application of the Buffer Area would result in the loss of a buildable area on a lot or parcel that was legally recorded prior to **(adoption date)**, the Administrator shall grant a waiver to permit encroachments into the Buffer Area, provided that the Administrator finds that the following criteria are met:
- i. Encroachments into the Buffer Area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities (private roads and driveways are permitted in the RPA pursuant to the criteria of Section 1222.12);
  - ii. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the Buffer Area shall be established elsewhere on the lot or parcel;
  - iii. The encroachment shall not extend into the seaward 50 feet of the Buffer Area; proposed encroachments into the seaward 50 feet shall be processed as exceptions in accordance with the requirements of Section 1222.23.
  - iv. The proposed development shall not exceed 10,000 square feet of land **disturbance activity** in the **Buffer Area RPA buffer**, exclusive of land **disturbance activity** necessary for the installation of a subsurface disposal field (drainfield) associated with an individual sewage disposal system serving an individual lot and land **disturbance activity** necessary

to provide access to the principal structure in accordance with Section 1222.12.

v. The proposed development shall not create more than 5,000 square feet of impervious surface within the ~~Buffer Area~~**RPA**, exclusive of impervious surface necessary to provide access to the principal structure in accordance with Section 1222.12.

vi. A Water Quality Impact Assessment is submitted for review and approved in accordance with the requirements of Section 1222.18.

vii. The Performance Criteria outlined in Section 1222.17 shall be satisfied or waived in accordance with this Chapter.

(b) In the event that a request for an administrative waiver is denied, the Administrator shall provide a written description of the rationale for the decision to the applicant.

(c) Construction of accessory structures and uses, such as parking areas, within the ~~Buffer Area~~**RPA** shall not be eligible for waiver consideration and shall be processed as RPA exceptions in accordance with Section 1222.23.

#### 1222.20 ADMINISTRATIVE WAIVER FOR MINOR ADDITIONS

(a) The Administrator may grant a waiver to permit encroachments into the RPA for the construction of additions to principal structures that were legally existing on **(adoption date)** provided that the Administrator finds:

i. That the following criteria are met:

a. The proposed footprint of the addition to the principal structure shall be limited to 2,500 square feet, and such addition shall not create more than 2,500 square feet of impervious cover, within the RPA. The 2,500 square foot thresholds shall be calculated based on the cumulative footprint of all additions, and all impervious cover, within the RPA added to the principal structure after **(adoption date)**.

b. A Water Quality Impact Assessment is submitted for review and approved in accordance with the requirements of Section 1222.18.

c. The proposed addition to the principal structure shall not extend into the seaward 50 feet of the Buffer Area; any proposed addition that would extend into the seaward 50 feet shall be processed as an RPA exception in accordance with the requirements of Section 1222.23.

- d. There shall be no net increase in nonpoint source pollutant load. The construction of a deck on an existing principal structure will be deemed to have met this finding provided that the deck is constructed over an existing maintained area, rainfall is allowed to pass through the deck, and no additional impervious area is created.
  - e. Any land **disturbance activity** exceeding 2,500 square feet complies with the erosion and sediment control requirements of Section 1222.17.
- ii. The requested waiver is the minimum necessary to afford relief;
  - iii. Granting the waiver will not confer upon the applicant any special privileges that are denied by this Chapter to other property owners who are subject to its provisions and who are similarly situated;
  - iv. The waiver is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
  - v. The waiver request is not based upon conditions or circumstances that are self-created or self-imposed; and
  - vi. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the activity from causing a degradation of water quality.
  - vii. Other findings as appropriate.
- (b) For the purpose of implementation of this section, decks, garages, and other customary and incidental structures that are attached to the principal structure shall be considered an addition to the principal structure and shall be eligible for waiver consideration.
  - (c) Construction of detached accessory structures and uses such as garages, gazebos, sheds, and parking areas within the RPA; expansion of any detached non-conforming accessory structure that requires additional disturbance of the RPA; and construction of accessory uses such as pools, patios, and terraces within the RPA shall not be eligible for waiver consideration and shall be processed as RPA exceptions in accordance with Section 1222.23.
  - (d) In the event that a request for an administrative waiver is denied, the Administrator shall provide a written description of the rationale for the decision to the applicant.

## 1222.21 ADMINISTRATIVE WAIVER OF PERFORMANCE CRITERIA

The Administrator may waive the Performance Criteria outlined in Section 1222.17, subject to the findings enumerated in Section 1222.23(a), except that such a waiver shall not waive the requirements of any other Chapter of the Codified Ordinances of Loudoun County. In the event that a request for an administrative waiver is denied, the Administrator shall provide a written description of the rationale for the decision to the applicant.

## 1222.22 CHESAPEAKE BAY REVIEW BOARD

- (a) A Chesapeake Bay Review Board shall be established to administer **RPA** exceptions in accordance with the requirements of this Chapter, hold public hearings as required by this Chapter, approve/disapprove exception requests based upon the findings enumerated in Section 1222.23(a) of this Chapter in such a manner that the intent of this Chapter is maintained, and hear appeals of administrative decisions.
- (b) The Chesapeake Bay Review Board shall be composed of 9 members, with demonstrated knowledge of and interest in environmental issues and shall be appointed by the Board of Supervisors for a term of 4 years. The members shall represent diverse professions related to agriculture, land development, and the environment.
- (c) A Chairman and a Vice-Chairman shall be elected by a majority vote of the Chesapeake Bay Review Board at the first meeting of each calendar year.
- (d) The Chesapeake Bay Review Board shall keep written records and minutes of all its proceedings, documenting findings of fact, and the vote of each member.

## 1222.23 RPA EXCEPTIONS

- (a) Any proposed modification to the Buffer Area Requirements of Section 1222.14 or Section 1222.15; any proposed use, development, or redevelopment **within the RPA** that is not exempt or permitted under this Chapter and ~~that is not~~ **eligible for authorized by** an administrative waiver under Section 1222.19, Section 1222.20, or Section 1222.21; or any proposed modifications to the requirements of Section 1222.18 may be granted through an **RPA** exception **approved**~~issued~~ by the Chesapeake Bay Review Board, provided that **RPA** exceptions associated with legislative applications shall be subject to review and action by the Board of Supervisors. An **RPA** exception may be granted following notice and a public hearing as set forth in this Section based upon the following findings:

- i. The requested **RPA** exception is the minimum necessary to afford relief;
  - ii. Granting the **RPA** exception will not confer upon the applicant any special privileges that are denied by this Chapter to other property owners who are subject to its provisions and who are similarly situated;
  - iii. The **RPA** exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
  - iv. The **RPA** exception request is not based upon conditions or circumstances that are self-created or self-imposed; and
  - v. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the activity from causing a degradation of water quality.
  - vi. Other findings as appropriate.
- (b) All **RPA** exception requests shall be submitted to the Administrator in writing in accordance with the following requirements and will not be accepted until all submission requirements have been met:
- i. Five (5) copies of an application form provided by the Administrator and completed and signed by the applicant.
  - ii. Five (5) copies of a Water Quality Impact Assessment prepared in accordance with the requirements of Section 1222.18.
  - iii. Photographs of the property showing existing structures, terrain, and vegetation.
  - iv. Five (5) copies of a map identifying classification of soil types, at a scale of one inch equals 200 feet (1"=200').
  - v. Five (5) copies of a statement of justification which addresses how the proposed development complies with the required findings outlined in (a), above.

The Administrator may require the submission of such additional information deemed necessary to review the **RPA** exception request application. The Administrator, upon written request with justification, may modify or waive the above submission requirements, if it is determined by the Administrator that the requirement is not necessary for the review of the application. The WQIA shall not be required to be submitted if the **RPA** exception requested is



a modification to the requirements of Section 1222.18; otherwise, the WQIA shall not be modified or waived by the Administrator.

(c) Within 90 days of receipt of a complete **RPA** exception request, unless an extended period is mutually agreed to by the applicant and the Administrator, the Administrator shall forward such **RPA** exception request to the Chesapeake Bay Review Board for a public hearing along with a recommendation for approval, denial, or approval with conditions. All public hearings shall be conducted in accordance with the following provisions:

- i. No public hearing shall be held unless the required notice has been satisfied as outlined in (d).
- ii. All hearings shall be open to the public. Any person may appear and testify at such hearing, either in person or by an authorized agent or attorney.
- iii. The Chesapeake Bay Review Board shall prescribe procedures for the conduct of hearings.
- iv. The public hearing may be continued or deferred upon a vote of the majority of the members. If a hearing has been opened, public testimony has been received, and there is cause for continuation of the hearing, no formal notice shall be required if the hearing is continued to a date certain. If a hearing is concluded, but action is deferred until a future date, no formal notice shall be required prior to action being taken. If a hearing has not been opened and there is cause for deferral of the hearing, written notice to adjacent property owners is required and shall be sent by first-class mail and postmarked not less than 5 days prior to the hearing.

(d) No public hearing shall be held unless documented evidence is presented that the following notice requirements have been satisfied:

- i. **Publication.** An advertisement containing a descriptive summary of the proposed action, the date, time, and location of the hearing, and a reference to the place(s) within the County where copies of the subject documents may be examined shall be published once a week for 2 successive weeks in a local newspaper having general circulation in the County. Such notice shall be published not less than 5 days nor more than 21 days before the date of the hearing, and there shall be a minimum of 6 days between the first and second publications.
- ii. **Written Notice to Adjacent Property Owners:** The Applicant shall send written notice to the last known address of the owners (as shown in the

County real estate assessment records), of all property abutting and immediately across the street from the subject property. In addition, if the subject property is included within an incorporated owners' association, then notice shall also be sent to such owners' association (at the address on file with the State Corporation Commission). All written notice shall be sent by first-class mail and postmarked not less than 5 days prior to the hearing. Written notice shall include the tax map number, the parcel identification number, and the street address of the subject property, the date, time, and location of the hearing, and a descriptive summary of the proposed action. A party's actual notice of, or participation in, the proceedings for which the written notice is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the required written notice.

iii. Prior to hearing, the Applicant shall file an affidavit with the Administrator demonstrating that notice has been sent in accordance with the requirements of this Chapter.

(e) An **RPA** exception request application may be withdrawn at any time by the applicant or his agent by giving notice in writing to the Administrator.

#### 1222.24 APPEALS

(a) An applicant aggrieved by any decision of the Administrator in the administration of this Chapter may, within 30 days of such decision, appeal the decision to the Chesapeake Bay Review Board by submitting a notice of appeal to the Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal. The Administrator shall forthwith forward to the Chairman of the Chesapeake Bay Review Board copies of all the documents filed with the appeal. The Chesapeake Bay Review Board shall affirm, modify, or overrule the decision of the Administrator within 90 days after the notice of appeal has been filed.

(b) Any person aggrieved by any decision of the Chesapeake Bay Review Board in the administration of this Chapter may, within 30 days of such decision, appeal the decision by filing a notice of appeal with the County Administrator and the Administrator. The Board of Supervisors shall review the record of the appeal before the Chesapeake Bay Review Board and affirm, modify, or overrule the Chesapeake Bay Review Board decision within 90 days after the notice of appeal has been filed.

(c) Any person aggrieved by any decision of the Board of Supervisors in the administration of this Chapter may, within 30 days of such decision, appeal the decision to the Circuit Court.

## 1222.25 VIOLATIONS AND PENALTIES

- (a) Where the Administrator finds a violation, the Administrator shall order a correction of the violation. Such correction may include restoring the property to the condition existing prior to the violation in accordance with an approved restoration plan. Where plantings are required to restore the property to the condition existing prior to the violation, the restoration plan shall specify the types and amount of vegetation to be planted consistent with the planting plan requirements of the Facilities Standards Manual and a schedule for the installation of the plantings, and shall include a provision requiring supplemental plantings to be provided in the event that a targeted stocking of 75 percent survival of the required plantings shown on the restoration plan, with uniform distribution, is not achieved within one year of planting as determined by the Administrator. When determined to be necessary by the Administrator, the violator shall provide surety in an amount sufficient to purchase and install the required plantings shown on the restoration plan. The surety must be in a form approved by the County Attorney and may consist of a cash escrow, a surety bond, or a letter of credit from a financial institution.
- (b) Failure to correct a violation shall be subject to penalties pursuant to Section 202.99 of the Codified Ordinances of Loudoun County.
- (c) Nothing in this section shall be deemed to limit the authority of the County to apply to the Circuit Court for injunctive relief to enjoin a violation or threatened violation of this Chapter, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for any conservation action undertaken by the County to preserve the Chesapeake Bay Preservation Area in accordance with this article.

## 1222.26 CONFLICTS

Whenever any provision of this Chapter imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Chapter shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Chapter, the provision of such State or Federal statute or other County ordinance or regulation shall govern.

1222.27 VESTED RIGHTS

The provisions of this Chapter shall not affect vested rights of any landowner under existing law.

1222.28 FEES

Fees shall be charged for review of any applications required by this Chapter, in accordance with a fee schedule adopted by resolution of the Board of Supervisors.